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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,842	05/17/2006	Virginia Ruth Pinney	31923	5737

7590
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05/07/2007

EXAMINER

CHEN, CATHERYNE

ART UNIT	PAPER NUMBER
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1655

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of Disposition of Claims: Claims pending in the application are 1-4,6,13,18,23,27-29,43,45,46,49,50,53,59,68,75,80,84,88,103,105,114,116,126,132,134-138,140-144,146,149,153 and 155-159.

DETAILED ACTION

1. Claims 1-4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 105, 114, 116, 126, 132, 134-138, 140-144, 146, 149, 153, 155-159 are currently pending. Please take notice of the election to species requirement in paragraph 3. To be fully responsive, applicant must fulfill this requirement.

Election/Restrictions

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 105, 114, 116, 126, 155-159, drawn to a composition.

Group II, claim(s) 132, 134-138, 140-144, 146, 149, 153, drawn to a method of reducing the negative effects of malodor.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The composition of the plant extracts are involved in increasing bioavailability and reducing inter- and intra-individual variability of an orally administered hydrophobic pharmaceutical compound comprising of essential oil components of rose, Canaga, frankincense, myrrh (see Benet et al. US 5665386, abstract, Table 1). The group II

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claims are not involved in increasing bioavailability and reducing inter- and intra-individual variability of an orally administered hydrophobic pharmaceutical compound; therefore, the reference shows that the claimed composition has a different use than the uses claimed in groups I-II. Thus, the reference shows a lack of unity.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The species are as follows:

Applicant must elect a specific plant extract or combination from Claims 2-4, 159.

Applicant must elect a specific auxiliary component or a mixture from Claims 28, 136, 155.

Applicant must elect a specific R group for Claim 46.

Applicant must elect a specific carrier from Claim 105, 114, 115, 126.

Applicant must elect a specific source or combination for Claims 134, 144.

Applicant must elect a specific location for Claims 135, 137, 140.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claims 2-4, 6, 13, 18, 23, 27-29, 43, 45, -46, 49-50, 53, 103, 105, 114, 116, 126, 132, 134-138, 140-144, 146, 149, 153 depend on Claim 1.

Claims 155-159 depend on Claim 59.

The following claim(s) are generic: Claims 1, 59, 159.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

The plant extracts of Claims 2-4, 159 lack unity of invention because they are of different plant species.

The auxiliary components of Claims 28, 136, 155 lack unity of invention because they are of different plant species.

The R group of Claim 46 lacks unity of invention because the different hydrocarbon components render the chemical distinct.

The carriers of Claim 105, 114, 115, 126 lack unit of invention because they are different articles of use.

The sources of Claims 134, 144 lack unity of invention because they are distinct sources with no relations.

The locations of Claims 135, 137, 140 lack unity of invention because they are distinct locations that have no relations to each other.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Patent Examiner
Art Unit 1655


SUSAN COE HOFFMAN
PRIMARY EXAMINER